

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 8, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1872

Cir. Ct. No. 2010CV1401

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

HACK-A-WAY FOREST PRODUCTS, INC.,

PLAINTIFF-APPELLANT,

MICHAEL WILM AND TAMMY WILM,

PLAINTIFFS,

V.

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Sauk County:
JAMES EVENSON, Judge. *Affirmed.*

Before Lundsten, Higginbotham and Sherman, JJ.

¶1 SHERMAN, J. This appeal involves a claim for relocation payments by Hack-A-Way Forest Products, Inc., arising out of an eminent domain

proceeding. Hack-A-Way leased property from Michael and Tammy Wilm, who also owned Hack-A-Way. Prior to the eminent domain, the Wilms owned two contiguous parcels along what was then U.S. Highway 12 near Baraboo. The two parcels are identified throughout by their tax identification numbers, 0642 and 0638. Prior to the taking, parcel 0642 fronted on Highway 12 along the parcel's east boundary and parcel 0638 was directly west of parcel 0642.

¶2 The eminent domain taking was part of a project of the Wisconsin Department of Transportation (DOT) to expand and relocate part of Highway 12. As a result of the taking, a part of parcel 0642 was taken and Highway 12 was relocated to cross through parcel 0642, somewhat west of its prior location. No part of parcel 0638 was involved in the taking. In a prior action, the Wilms and Hack-A-Way settled with the DOT on all issues related to the eminent domain, while reserving the right to certain relocation claims.

¶3 Both Hack-A-Way and the Wilms submitted relocation claims to DOT and were denied.

¶4 Hack-A-Way and the Wilms then jointly filed this action in circuit court against the DOT. The joint complaint alleged that both the Wilms and Hack-A-Way “conducted business on the real property” taken by the DOT and that both the Wilms and Hack-A-Way were “displaced persons pursuant to WIS. STAT. § 32.19(2)(g)” (2011-12).¹

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶5 The DOT filed a motion for summary judgment against both Hack-A-Way and the Wilms. The circuit court granted summary judgment against the Wilms,² but denied summary judgment against Hack-A-Way. The court determined that the Wilms were not “owner displaced persons” under the statute, but that Hack-A-Way was a displaced person and that material issues of fact remained for trial.

¶6 The DOT moved for reconsideration of the denial of summary judgment against Hack-A-Way. The circuit court granted the DOT’s motion for reconsideration, and ordered both the Wilms and Hack-A-Way’s claims dismissed. The court decided that it had made an error of law in the prior decision denying summary judgment against Hack-A-Way and that Hack-A-Way was not a “displaced person” under the relocation statute. Hack-A-Way appeals the dismissal of its complaint. For the reasons that follow, we affirm the circuit court.

DISCUSSION

¶7 Hack-A-Way appeals the circuit court’s order dismissing its complaint upon summary judgment. We review summary judgments de novo, using the same methodology as the circuit court. *Hardy v. Hoefflerle*, 2007 WI App 264, ¶6, 306 Wis. 2d 513, 743 N.W.2d 843. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). “[W]hen an essential element of the claim cannot be proved, under any view of the evidence,

² The Wilms do not appeal the granting of summary judgment against them and the dismissal of their complaint.

summary judgment is appropriate.” *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 233, 568 N.W.2d 31 (Ct. App. 1997).

¶8 In addition to paying just compensation for the value of the property taken, Wisconsin’s eminent domain law provides for payments to displaced persons for other losses suffered as a result of the taking. WIS. STAT. § 32.19(1). These payments, referred to as relocation payments, are available only to persons who meet the statutory definition of “displaced person.” The primary question before us is whether Hack-A-Way is a “displaced person” within the meaning of § 32.19.

¶9 If the meaning of a statute is plain and unambiguous, we apply that plain meaning. *State v. Warbelton*, 2008 WI App 42, ¶13, 308 Wis. 2d 459, 747 N.W.2d 717. Where a word or phrase is specifically defined by statute, no other rule of statutory construction need be applied to determine its meaning. *Sullivan Brothers, Inc. v. State Bank of Union Grove*, 107 Wis. 2d 641, 646, 321 N.W.2d 545. We interpret statutory language in the context within which it is used, not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results. *Warbelton*, 308 Wis. 2d 459, ¶13.

¶10 There are three separate definitions within WIS. STAT. § 32.19(2) pertaining to “displaced persons.” Each of these definitions, as we will explain below, pertains to entitlement to a different set of relocation payments. We begin by reviewing each of the three definitions and the payments to which they pertain, before applying the appropriate definition to the undisputed facts in this case.

¶11 The general definition of “displaced person” in relevant part is “any person who moves from real property or who moves his or her personal property

from real property” as a result of either a “notice of intent to acquire or the acquisition of the real property, in whole or in part.” WIS. STAT. § 32.19(2)(e)1.a. A person meeting this broad definition is entitled to payments under WIS. STAT. § 32.19(3), which includes moving expenses. There are two other more specific definitions.

¶12 “Owner displaced person” is defined as “a displaced person who owned the real property being acquired and also owned the business or farm operation conducted on the real property being acquired.” WIS. STAT. § 32.19(2)(g). An “owner displaced person” is entitled to additional payments to help offset the replacement cost of the business which operated on the real property that was taken. WIS. STAT. § 32.19(4m)(a). Similarly, a “tenant displaced person” is a “displaced person who owned the business or farm operation conducted on the real property being acquired but leased or rented the real property.” WIS. STAT. § 32.19(2)(i). A “tenant displaced person” is entitled to additional payments to help offset the cost of renting new premises. WIS. STAT. § 32.19(4m)(b).

¶13 Because each of the three definitions is prerequisite to a different set of relocation payments, the terms are not synonymous. They cannot simply be used interchangeably at convenience. From the plain language of the statutory definitions it is clear that being a “displaced person” is a part of the definition of “tenant displaced person” and “owner displaced person.” However, since there are payments available to “displaced persons” separate from those available to “tenant displaced persons” and “owner displaced persons,” there is no reason to conclude that the inverse is also true. The statutory definition of “displaced person” does not require, and the parties have not cited us to any authority that

requires, a “displaced person” to necessarily be either an “owner displaced person” or a “tenant displaced person.”

¶14 The briefs of the parties have focused on two issues: (1) whether Hack-A-Way was in fact displaced from parcel 0642 and (2) whether Hack-A-Way was a tenant on parcel 0642. However, we do not reach these issues because we affirm the circuit court on different grounds.³

¶15 Hack-A-Way has alleged quite specifically in its complaint that it is a displaced person “pursuant to WIS. STAT. § 32.19(2)(g).” This is the definition of “owner displaced person.” It is undisputed that Michael and Tammy Wilm owned the real estate that was taken, not Hack-A-Way. Therefore, Hack-A-Way cannot be an “owner displaced person” because WIS. STAT. § 32.19(2)(g) specifies that an “owner displaced person” is one who owned the property acquired.

¶16 Hack-A-Way has neither amended nor moved to amend its complaint. In addition, amendment of the complaint to conform to the evidence under WIS. STAT. § 802.09(2), even if it were appropriate on this record, is not available at summary judgment. *See Thom v. OneBeacon Ins. Co.*, 2007 WI App 123, ¶25, 300 Wis. 2d 607, 731 N.W.2d 657.

¶17 Since Hack-A-Way cannot prove, under any view of the undisputed evidence, that it meets the definition of “owner displaced person” as alleged in its

³ An appellate court is concerned with whether the circuit court decision being reviewed is correct, rather than with the reasoning employed by the court. If the holding is correct, it should be sustained, and we will do so on a theory or on reasoning not presented to the circuit court. *Liberty Trucking Co. v. DILHR*, 57 Wis. 2d 331, 342, 204 N.W.2d 457 (1973).

complaint, summary judgment in favor of the DOT is appropriate. *See Smith*, 212 Wis. 2d at 233.

CONCLUSION

¶18 For the reasons set forth above, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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